



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 17, 1996

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR96-1681

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100605.

The Travis County District Attorney's Office received an open records request for information regarding three former peace officers, including an investigation file on a named individual. You state that much of the requested information is excepted from required public disclosure pursuant to sections 552.101, 552.102, 552.108, 552.111, 552.117, and 552.119 of the Government Code.

You contend that a highlighted portion of Exhibit A of the submitted documents is excepted from required public disclosure by section 552.101, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This highlighted portion refers to a case that was submitted to the Grand Jury and summarizes the arrest and charge filed against a private citizen. You contend that this information is excepted from required public disclosure under the common-law right to privacy. Information may be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We believe, that the highlighted information is nothing more than front-page offense report information and, therefore, may not be withheld under section 552.101.

You also contend that the contents of Exhibit B, Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") Notices of Termination and related correspondence regarding the decommissioning of two of the three former employees at issue in this request are excepted from required public disclosure under section 552.101. You contend that the TCLEOSE forms are confidential under section 415.0635 of the Government Code. You claim that the correspondence may also be excepted under section 552.101 because it contains information "similar to" the information contained on the TCLEOSE forms. Section 415.0635 directs a law enforcement agency to submit a report to TCLEOSE on a prescribed form when a licensed officer or county jailer resigns or is terminated from employment. Gov't Code § 415.0635(a). Section 415.0635(e) makes such a report confidential and exempt from disclosure under the Open Records Act. The TCLEOSE forms appear to fall within the scope of section 415.0635(a) and, consequently, are exempt from disclosure under section 552.101 in accordance with section 415.0635(e). However, as for the related correspondence, we find no information in these documents which is highly intimate and embarrassing and, therefore, the correspondence may not be withheld under section 552.101 and the common-law right to privacy.¹

You also contend that certain highlighted information in Exhibit C is excepted from required public disclosure under sections 552.101 and 552.102 and the common-law and constitutional rights to privacy. Section 552.102 protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). The constitutional right to privacy protects two interests. Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 (1992) at 4. The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.* The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 (1987) at 5-7 (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional privacy doctrine is far narrower than that under the common law;

¹We note that the home addresses and social security numbers contained in this correspondence may or may not be excepted from public disclosure under section 552.117 or federal law (see discussion below).

the material must concern the "most intimate aspects of human affairs." *See* Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 343 (1982) (information revealing that a particular individual suffers from severe emotional or mental distress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987); and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). In addition, financial information concerning an individual is in some cases protected by a common-law right of privacy. *See* Open Records Decision Nos. 545 (1990), 523 (1989). On the other hand, this office has previously held that a common-law right of privacy does not protect facts about a public employee's misconduct on the job or complaints made about his performance. *See* Open Records Decision Nos. 438 (1986), 219 (1978), 230 (1979). Specifically, for example, references to on-the-job alcohol use by a former employee may not be withheld under section 552.101. We agree, however, that the information in Exhibit C relating to financial matters is excepted from required public disclosure under section 552.101 and the common-law or constitutional right to privacy. We have marked the documents which must be withheld. The remainder must be released to the requestor.

You contend that the information in Exhibit D is excepted from required public disclosure under either section 552.117(2) or 552.119. Section 552.117(2) excepts from required public disclosure information relating to the home address, home telephone number, and social security number of a peace officer as defined by article 2.12 of the Code of Criminal Procedure, as well as whether the peace officer has family members. However, as the information submitted to this office relates to "former" peace officers, section 552.117(2) does not apply. Section 552.117(1) *does* except from required public disclosure this information as it relates to former *employees* of a governmental body, so long as the former employees have elected to keep this information confidential in compliance with section 552.024. *See* Open Records Decision No. 530 (1989) (employee must make election prior to receipt of open records request). Therefore, you must release the information revealing the home address, home telephone number, and whether the peace officers have family members to the requestor unless the former peace officers made the election provided for in section 552.024 of the Government Code.²

²In addition, you may not rely upon section 552.117 to withhold the former peace officers' social security numbers unless the former peace officers made the election provided for in section 552.024. However, federal law may prohibit disclosure of these social security numbers. A social security number is

Section 552.119 of the Government Code prohibits the release of a photograph that depicts a peace officer as defined by article 2.12 of the Code of Criminal Procedure except in certain circumstances. There are photographs of each of the former peace officers in Exhibit D. Unless the peace officer has given his or her consent to release of their photograph, or one of the exceptions set forth in section 552.119 applies, you must withhold the photographs.

Finally, you contend that Exhibit E, an investigative file regarding an individual, is excepted in its entirety under sections 552.108 and 552.111. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We note, however, that information normally found on the front page of an offense report is generally considered public.³ *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). We have examined Exhibit E and conclude that, except for front page offense report information, section 552.108 of the Government Code excepts the contents of Exhibit E from required public disclosure.⁴ Of course, you may choose to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

(Footnote continued)

excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994). We note that the federal statute provides that the law requiring the maintenance of the employee's social security number must have been enacted on or after October 1, 1990. In other words, the fact that the social security number was obtained after October 1, 1990, by itself, does not dispose of the issue. We are unable to determine whether the social security numbers are confidential under this federal statute. We note, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information.

³The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

⁴As we have determined that you may withhold Exhibit E under section 552.108, we need not address your arguments under section 552.111.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal line extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref: ID# 100605

Enclosures: Marked documents

cc: Mr. Shane Phelps
P.O. Box 2013-182
Austin, Texas 78768-2013
(w/o enclosures)